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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 229

ROBERT P. PATTERSON, Secretary of War, and EDWARD F. WITSELL, The Adjutant General, United States Army, *Petitioners*

v.

JAMES JOHN LAMB

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR THE RESPONDENT

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December 30, 1946

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OPINION BELOW

The District Court of the United States for the District of Columbia did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 22-29) is reported at 154 F. (2d) 319.

JURISDICTION

The judgment of the Court of Appeals was entered on March 25, 1946 (R. 29). The petition for a writ of certiorari was filed on June 24, 1946, and was granted October 14, 1946 (R. 33). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a court may, by mandatory injunction, direct the Secretary of War and The Adjutant General to issue to a discharged soldier a discharge certificate that is in accordance with the facts, and with the Army Regulations existing at the time of the soldier's discharge.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statutes, Army Regulations, and discharge certificates involved are set out in the Appendix to the petitioners' brief, pp. 58-75.

STATEMENT

The respondent filed suit in the District Court of the United States for the District of Columbia to obtain a judicial ruling that he was an honorably discharged soldier of World War I, and a mandatory direction to the predecessors of the petitioners to issue to him a certificate of honorable discharge as such. The District Court granted a motion to dismiss on the ground that the complaint failed to state a cause of action on which relief could be granted. The United States Court of Appeals reversed the judgment of the District Court.

The facts, alleged in the complaint and admitted by the motion to dismiss, are these:

The respondent, James John Lamb, a resident of Davenport, Iowa, was notified on November 9, 1918, by his local draft board that he had been selected for immediate mili-

tary service. He was ordered to report to the board at 9:00 a. m. on November 11 for military duty. The notice which he received informed Lamb that "from and after the day and hour just named you will be a soldier in the military service of the United States". (R. 13) The respondent reported at the designated time and place and was then notified orally by the local board that he was a soldier in the Army of the United States. By a written warrant of appointment, he was made the leader and special police officer of a contingent of drafted men during the journey from Davenport to Camp Dodge. (R. 14). Pursuant to an oral order given to him later on the morning of November 11, Lamb assembled his contingent and proceeded with it from the office of the local board for the purpose of entraining for the camp.

Before the respondent had actually boarded a train, however, he was told orally that because of the armistice with Germany draft calls had been cancelled. But he was also told that he was still a soldier, subject to military orders and to laws and regulations governing the army, and that he must hold himself in readiness at all times to obey further orders.

On November 15, 1918, Lamb received by mail from his local board a notice that by order of the Provost Marshal General, acting under the instructions of the President, all orders of induction into the Army had been cancelled and that all registrants who were inducted into the Army, but not entrained, *were discharged from the Army, and that the cancellation of such induction orders in cases of registrants who were inducted had the effect of an honorable discharge from the Army.* (R. 15) This action was taken by the local board pursuant to an order of the President, issued through the Provost Marshal General, dated November 11, 1918, which contained the following language (R. 16):

> The President further directs that all registrants who are already *inducted into the Army* under these

> calls because of the fact that the day and hour specified in form ten twenty-eight or entered in column twenty-four of the classification list have arrived, but who have not been actually entrained for a mobilization camp, shall be, and that they are hereby, *discharged from the Army.* (Emphasis ours)

On or about January 26, 1919, Lamb received a certificate styled "Discharge from Draft" which had been issued at and mailed from Camp Dodge and which was dated as of November 14, 1918. (R. 17) Accompanying it was a Quartermaster's check for $4.00 bearing the notation "Final Pay", which was in payment for service with the army for the period from November 11, 1918, to November 14, 1918, both dates inclusive. (R. 19) From that time on Lamb represented himself as having been honorably discharged from the Army of the United States.

The complaint alleged (Paragraph 15, R. 6), and the motion to dismiss admitted, that the respondent's army service was honest and faithful and his conduct was such to warrant his reenlistment.

A statute of Iowa grants tax exemption on "the property not to exceed Five Hundred Dollars in actual value of any honorably discharged soldier, sailor, marine or nurse of the War with Germany." After the enactment of this exemption Lamb annually applied to the taxing authorities of Scott County, Iowa, the place of his residence, for exemption thereunder, and until the year 1940 each annual application was granted by those authorities. But when he presented his verified claim for the statutory exemption for the year 1941, the Board of Supervisors of Scott County claimed that he had not been a soldier, that he had not been honorably discharged from the army, and that his status was merely that of one who had been discharged from the draft.

Immediately following this occurrence, Lamb sued the members of the Board of Supervisors in the state court at Davenport, alleging that he was an honorably discharged

soldier of the war with Germany and that the supervisors had acted illegally in denying him the tax exemption. He prayed that the court declare him to have been honorably discharged and, therefore, entitled to the tax exemption. In May 1942 the Scott County District Court adjudged that "James J. Lamb is an honorably discharged soldier of the War with Germany which frequently is called World War I." Thereafter the Board of Supervisors appealed to the Supreme Court of Iowa and on March 9, 1943, that court reversed, a majority and a dissenting opinion being filed. In the course of the majority opinion it was said, "we feel there is a serious doubt upon the question whether the appellee in an honorably discharged soldier of the War with Germany within the meaning of section 6946, Code of Iowa 1939". A rehearing was denied on June 15, 1943.

On November 2, 1943, the respondent applied to The Adjutant General of the United States Army for a certificate of honorable discharge. The request was denied on November 20, 1943. Lamb endeavored to get The Adjutant General to reconsider, but that official finally informed him on February 29, 1944, that he adhered to his original denial of th claim. Lamb then filed suit in the District Court of the United States for the District of Columbia against Henry L. Stimson, then Secretary of War, and J. A. Ulio, then The Adjutant General of the United States Army. In his complaint he recited in detail the facts which we have summarized, and prayed that the court declare that he had been a soldier in the Army of the United States from November 11, 1918, to November 14, 1918, both dates inclusive, and that during that period his conduct was such as to warrant his reenlistment in the army and that his service was honest and faithful; that he was not rejected because of physical unfitness; that he is an honorably discharged soldier of the war with Germany and that he is entitled to a certificate showing that his service in the army was honest and faithful; and that he was honorably discharged from military service by reason of the order of the President,

dated November 11, 1918. He further prayed that the court mandatorily direct the defendants to issue to him "a proper and lawful discharge from the Army of the United States as by law provided * * *."

The Court of Appeals held that the discharge from draft certificate issued to the respondent was not authorized by regulations in force on the date of the respondent's discharge; that under the existing regulations and upon the admitted facts the respondent was entitled to a certificate of honorable discharge; that the duty of the authorities to issue to him such a certificate was merely ministerial; and that the claim of the respondent was not barred by laches.

SUMMARY OF ARGUMENT

1. The discharge of the respondent was governed by Paragraph 150 of the Army Regulations of 1913, as corrected to April 15, 1917. This was the only regulation applicable to the respondent's discharge on the date when he was discharged, November 14, 1918. There was no regulation authorizing the certificate of discharge from draft issued to the respondent. War Department Circular No. 651, promulgated January 12, 1918, upon which the petitioners rely as authority for the certificate of discharge from draft issued to the respondent, related *only* to men who were *rejected*, whereas upon the admitted facts the respondent was not rejected but was in every respect qualified for military service, and he did in fact serve.

   a. The respondent was a soldier in the Army of the United States, to whose discharge Paragraph 150 of the Regulations applied. That he served as a soldier in the Army is admitted as a fact by the pleadings; and he was a soldier in the Army as a matter of law.

2. Paragraph 150 of the Army Regulations required that a certificate of honorable discharge be issued to a soldier whose service had been honest and faithful, and whose con-

duct had been such as to warant his reenlistment. The petitioners admit that the service of the respondent was honest and faithful and that his conduct was such as to warrant his reenlishment. Upon the admitted facts, therefore, the petitioners are under a ministerial duty to issue to the respondent a certificate of honorable discharge. To compel the performance by the petitioners of this ministerial duty is not to interfere with the exercise of their discretion in the management of the Army, but only to require them to obey the law. The argument of the petitioners, and the cases cited by them in support of the proposition that a court will not interfere with the military authorities in the exercise of their discretion, are not in point; for here under the regulations and upon the admitted facts the petitioners had no discretion.

3. The remedy of the respondent has not been barred by laches. He has been diligent in asserting his rights and the petitioners have in no way been prejudiced by any delay.

ARGUMENT

1. The discharge of the respondent was governed by Paragraph 150 of the Army Regulations of 1913, as corrected to April 15, 1917; and on November 14, 1918, when the respondent was discharged, there was no regulation authorizing the certificate of discharge from draft issued to him.

Paragraph 150 of the Army Regulations of 1913, as corrected to April 15, 1917 (Petitioners' Appendix, pp. 61-62) divided discharge certificates into three classes, and provided that:

> They will be used as follows:
>
> 1. The blank for honorable discharge, when the soldier's conduct has been such as to warrant his reenlistment and his service has been honest and faithful.

2. The blank for dishonorable discharge, for dishonorable discharge by sentence of a court martial or a military commission.

3. The blank for discharge when the soldier is discharged except as specified under sections 1 and 2 of this paragraph (C. A. R. Nos. 14 and 34).

The complaint alleged (Paragraph 15, R. 6) that the respondent "served as a soldier in the Army of the United States from November 11, 1918 to November 14, 1918, both dates inclusive, and that his said service was honest and faithful and his conduct was such as to warrant his reenlistment". These facts being admitted by the motion to dismiss, as they were, it follows that Paragraph 150 of the Army Regulations required the issuance of a certificate of honorable discharge to the respondent. The petitioners contend, however, that the respondent's discharge was not governed by Paragraph 150, but rather by an amendment to the Regulations promulgated on January 12, 1918, as War Department Circular No. 651; and that War Department Circular No. 651 authorized the certificate of discharge from draft issued to the respondent. We think it clear that this circular had no application to the discharge of the respondent.

War Department Circular No. 651, set out in full in the Appendix to the petitioners' brief, pp. 62-66, provided, under the heading "Disposition of rejected men", that

> All men rejected for military service at place of mobilization will be furnished the following:
>
> "(a) A discharge from draft on Form No. 638, A. G. O. (Petitioners' Appendix, p. 63)

Form No. 638, A. G. O. (reproduced in the Appendix to the petitioners' brief, pp. 68-71), bore on its face the statement: "Note.—This form will be used for discharge of aliens and alien enemies and of men rejected on account of physical unfitness, dependency, etc." This note and the inclusive "etc." obviously referred to Section 177 of the

Selective Service Regulations, relating to rejected men, which was printed on the back of Form 638 A. G. O. and which listed the causes for rejection specified in the note, together with "any other cause for deferred classification prescribed by these regulations".

It is apparent that War Department Circular 651 was not applicable to the discharge of the respondent. That circular related only to rejected men. The complaint alleged (Paragraph 15, R. 6) and the motion to dismiss admitted that the respondent was never rejected, but was in every respect qualified for service, that he did serve, and "that he was discharged from the Army solely because of the signing of the Armistice between the United States and Germany".

Our conclusion that Circular No. 651 did not apply to the respondent's discharge is supported by the fact that on December 4, 1918—subsequent to the discharge—the War Department issued Circular No. 111 (Petitioners' Appendix, p. 66), which authorized Form No. 638-1, A. G. O., the form of discharge from draft certificate issued to the respondent. Significantly, Circular No. 111 refers to Form No. 638-1, A. G. O., as "a new blank form". (Petitioners' Appendix, p. 68). As the court below properly held, this regulation did not and could not apply to the case of a soldier who had already been discharged.

The petitioners say in their brief (p. 22), "The court below concluded (R. 26) that Form 638-1 depended for its validity on Circular No. 111 of December 4, 1918. But this was clearly erroneous * * *." As the opinion of the Court of Appeals shows, however, and as the petitioners cannot deny, *the petitioners themselves rested their case below upon Circular No. 111; not until they reached this Court did they rely upon Circular No. 651 as authority for the certificate issued to the respondent.*

a. *The respondent was a soldier in the Army of the United States, so that his discharge was governed by Paragraph 150 of the Regulations.* The written order of induction (R. 13) officially informed the respondent that from

the moment of induction he was "a soldier in the military service of the United States." The complaint (Paragraphs 14, 15, R. 6) alleged further that he "served as a soldier in the Army of the United States from November 11, 1918 to November 14, 1918, both dates inclusive * * *; that he was discharged from the Army", and that he was paid by the Quartermaster "for his services with the Army * * * at the rate of pay then prevailing for * * * enlisted men". The motion to dismiss admitted that these allegations were true. It was also admitted that the respondent was discharged from the Army by order of the President, transmitted in writing through the Provost Marshal General, and directing that the respondent be "discharged from the Army" (Complaint, paragraph 12, R. 5; Exhibit D, R. 16); and that the respondent was duly notified in writing by the draft authorities that he was "discharged from the army" and that this discharge had "the effect of an honorable discharge from the army" (Complaint, paragraph 11, R. 5; Exhibit C, R. 15). In short, the respondent served as a soldier in the Army, was paid by the Army for his services as a soldier, was discharged from the Army, and was told that he had been discharged from the Army. In the face of these facts the petitioners now concede that as a matter of law the respondent entered into the "military service" and became subject to military orders and the Articles of War (Petitioners' Brief, pp. 16-18); yet the petitioners now argue that the respondent was "never in the Army" (Petitioners' Brief, pp. 7, 8, 18, 22, 23, 26, 27, 29). From their premise that the respondent was never in the Army the petitioners conclude that his discharge was not subject to Paragraph 150 of the Army Regulations governing the discharge of soldiers; in other words the petitioners say that the respondent's fulfillment of the requirements of Paragraph 150, by honest and faithful service and meritorious conduct, could not entitle him to an honorable discharge. We are at a loss to understand the petitioners' argument. If the respondent was not in the Army, then where was he and what was his status? If he was not a soldier, do the petitioners say that he was a civilian? And do the peti-

tioners now undertake to deny the facts which they admitted by their motion to dismiss? We submit that it is perfectly plain that the respondent was a soldier in the Army, and that his discharge was therefore governed by Paragraph 150 of the Army Regulations.

The petitioners argue that because a soldier after his induction might have been discharged or "rejected" pursuant to Circular No. 651, it follows that such a man was never "in the Army". The argument involves a *non-sequitur*. The fact that the man was "in the Army" when inducted was not altered by the possibility of his subsequent release from service. In any event the respondent was never discharged or rejected pursuant to Circular No. 651, nor did any ground for such discharge or rejection exist in his case.

2. The petitioners are under a ministerial duty to issue to the respondent a certificate of honorable discharge.

As we have demonstrated, the discharge of the respondent was governed by Paragraph 150 of the Army Regulations. Paragraph 150 required that an honorable discharge be issued when the soldier's conduct had been such as to warrant his reenlistment and his service had been honest and faithful (Appendix to Petitioners' Brief, pp. 61, 62). The complaint alleged and the motion to dismiss admitted that the respondent "served as a soldier in the Army of the United States from November 11, 1918 to November 14, 1918, both dates inclusive, and that his said service was honest and faithful and his conduct was such as to warrant his reenlistment" (R. 6). Upon the admitted facts, therefore, Paragraph 150 of the Regulations required the military authorities to issue to the respondent a certificate of honorable discharge.

The petitioners argue that to compel them to perform their plain ministerial duty under the regulations is to interfere with the exercise of their discretion in the management of the Army. The well-reasoned opinion of the Court

of Appeals (R. 22) demolished this argument. The Court said (R. 26, 27):

> We proceed to the second contention of the appellees which is that the issuance of an honorable discharge certificate is a discretionary act and not subject to control by mandamus. It is urged upon us that it rests in the sound discretion of the Secretary of War whether to issue a certificate of honorable discharge to a soldier separated from the service, and that we should not substitute our judgment for that of the Secretary as to the quality of appellant's service and his character as exhibited during that service.
>
> It must be conceded that the determination originally of the several forms of certificates of discharge was a proper exercise of the executive authority of the Secretary; but, having exercised that authority and having defined the three types of certificates to be issued, and having by regulation established standards to govern the selection of the proper form to be issued to each discharged soldier, the executive authority of the Secretary had been fully exercised, and the duty of the army officer at Camp Dodge in issuing a certificate of discharge to the appellant was simply ministerial, as though the regulation had been a statute.[1] That officer did not have, and indeed the Secretary himself would not have had, the right arbitrarily to issue to Lamb any form of discharge certificate other than that which was appropriate to his status according to the standards set up in paragraph 150 of the Army Regulations. True it is that the Secretary again could exercise his executive authority to provide for additional and different forms of discharge, as he did by the regulations of January 12, 1918, and again on December 4, 1918; but, once standards are erected by regulation, it is merely ministerial to observe them. Consequently, it is incorrect to say, as the appellees do, that whether the appellant is entitled to a certificate of honorable discharge rests in the sound discretion of the Secretary of War.[2]

[1] Citing *Arizona Grocery Co.* v. *A. T. & S. F. Ry. Co.*, 284 U. S. 370, 386.
[2] Citing *Miguel* v. *McCarl*, 291 U. S. 442.

The court does not substitute its judgment for that of the Secretary as to the quality of appellant's service and his character as exhibited during that service. The Secretary determined, by paragraph 150 of the Army Regulations, that the blank for honorable discharge must be used "when the soldier's conduct has been such as to warrant his reenlistment and his service has been honest and faithful." The appellant's complaint, against which the appellees' motion to dismiss was leveled, alleges that the appellant's conduct was such as to warrant his reenlistment and that his service had been honest and faithful. The motion to dismiss has the effect of admitting these facts. So, for the purpose of considering the motion to dismiss, it is the Secretary's considered judgment, expressed in paragraph 150, that Lamb is entitled to an honorable discharge.

Davis v. *Woodring*, 72 App. D. C. 83, 111 F. (2d) 523, is cited by the petitioners in support of their proposition "that since the individual discharged from the military service was not entitled by law to any particular form of discharge, he could not, if dissatisfied with the type of certificate issued to him, resort to the courts for relief" (Petitioners' Brief, pp. 13, 14). That case, however, clearly stands for the proposition that a court will intervene when the certificate of discharge issued to a soldier is not in accordance with the Regulations and with the actual facts. It appeared that Davis had received a certificate of discharge from draft as a "rejected man" under the provisions of War Department Circular No. 651, dated January 12, 1918. The Court of Appeals held that under Paragraph 150 of the Army Regulations Davis would have been entitled to an honorable discharge; but the Court held that these regulations had been properly amended by War Department Circular No. 651, which applied to Davis. After quoting the provisions of Paragraph 150 of the Army Regulations, the Court said:

If this were all, we should be obliged to say that petitioner should have been given an honorable dis-

> *charge, since admittedly his "conduct" warranted his reenlistment, and his service was honest and faithful.* But after our entry into the war and the passage of legislation creating a national army through the Selective Draft Act, the Secretary of War, under date of January 12, 1918, issued an order to mustering officers and others attached to mobilization camps, requiring them to make and forward records of accepted and rejected men on prescribed forms. Under the title "Disposition of Rejected Men", there is to be found a provision that men "discharged from draft" shall be furnished a certificate of discharge on Form No. 638, A. G. O., which is the form furnished to petitioner in this case.
>
> * * * * * * * * *
>
> If, therefore, we are correct in thinking that the Secretary's January 12th order, amending the former regulations in respect to the form of discharges, was within his power, it follows that what petitioner received in this case—*being in accordance with existing regulations and also in accordance with the actual facts*—was all that he could lawfully demand. (Italics supplied.)

It is, therefore, plain that had Paragraph 150 of the Army Regulations not been modified by the order of January 12, 1918 (War Department Circular No. 651), *relating to rejected men and applicable to Davis*, the Court of Appeals would have held that Davis was entitled to an honorable discharge, and the Court would have directed the authorities to issue such a discharge to him.

The argument of the petitioners that a court will not interfere with the military authorities in the exercise of their discretion is not apposite, for here under the Regulations and upon the admitted facts the authorities had no discretion. Similarly the cases cited by the petitioners on this point are wide of the mark, for in those cases the authorities acted within the limits of their discretion. Thus in *Denby* v. *Berry*, 263 U. S. 29 (Petitioners' Brief, pp. 8, 10, 14, 25, 33, 36, 37, 45, 53), the Secretary of the Navy acted

within the plain limits of his discretion in ordering the petitioner to inactive duty. It is true that the petitioner in that case contended that the action of the Secretary was in violation of a Navy Regulation; but this Court disposed of that contention upon the ground that long before the action of the Secretary was taken, the Regulation in question had been stricken from the Navy Regulations and had "lost its statutory force" (263 U. S. 37, 38). We submit that neither that case nor any other decision in the books supports the doctrine that the Secretary of War may violate an existing regulation which has the force of law and may with impunity destroy rights and legal relations which have accrued under that Regulation.

The argument of the petitioners, that they may do as they please in issuing discharge certificates without regard to the Regulations, leads to dangerous results. If this argument be sound, then the petitioners may issue a certificate of dishonorable discharge to a soldier whose service has admittedly been in all respects honorable, and who under the Regulations is entitled to an honorable discharge, and the soldier has no recourse. Indeed, it inevitably follows, from the argument of the petitioners, that they may revoke any honorable discharge certificate heretofore issued, and substitute therefor a new and different certificate in accordance with their whim of the moment. To compel the petitioners to perform their plain ministerial duty in this case is only to require them to obey the law. We submit that the military, like all others in authority, should be subject to law, and that this Court should reject the pernicious doctrine that they are autocrats who may do just as they please.

3. The remedy of the respondent has not been barred by laches.

The complaint showed that the respondent was advised by his local draft board on November 15, 1918, that the cancellation of his induction order after his induction had

"the effect of an honorable discharge from the Army" (Complaint, paragraphs 11, 16, R. 5, 6; Exhibit C, R. 15). The complaint further showed that the order of the President, dated November 11, 1918, pursuant to which the respondent was discharged, stated that the respondent and others in his circumstances were "discharged from the Army" (Exhibit D, paragraph three, R. 16). In honest reliance upon these statements the respondent thereafter represented himself as an honorably discharged soldier and he annually received a tax exemption upon that basis. It was not until 1941 that his local tax authorities questioned the status of the respondent as an honorably discharged soldier. Until this time the respondent had been lulled into the reasonable belief that he had in fact received an honorable discharge; and nothing had occurred to dispel his belief. The complaint showed in detail the steps taken by the respondent to obtain an honorable discharge after discovering that he had been wrongly advised concerning the character of the discharge certificate issued to him (Complaint, paragraphs 16-20, R. 6-9). Without repeating or attempting to summarize these allegations of the complaint, it seems enough to say that they clearly show diligence on the part of the respondent after he learned of the wrong that had been done. See *La Parr* v. *City of Rockford*, 100 F. (2d) 564, 567 (CCA 7); *Des Moines Terminal Company* v. *Des Moines Union Ry. Company*, 52 F. (2d) 616, 630 (CCA 8). Moreover, as the Court of Appeals well said, there is nothing to show that there has been any change of condition or relations since 1918, because of which it would be an injustice to the petitioners to permit the respondent to assert his rights at this time. As this Court said in *Galliher* v. *Cadwell*, 145 U. S. 368, 372, with respect to the defense of laches:

> The cases are many in which this defense has been invoked and considered. It is true, that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle per-

vades them all. They proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in a proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in condition or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them.

The petitioners have departed from the record to tell the Court that there are over 45,000 individuals who "would be able to claim very substantial benefits, benefits which Congress up to now had advisedly withheld from them" if the decision below remains undisturbed (Petitioners' Brief, p. 55). Whether there are 45,000 such individuals, and specifically whether they would be able to claim substantial benefits, are issues not presented by this record, issues which we are not required to debate. We think it enough to say that, if the respondent was entitled by law to a certificate of honorable discharge, then he should have it; and if Congress then wishes to provide that he should not enjoy certain financial benefits, then Congress may do so. We may note however that there is no suggestion that the respondent has demanded any benefit from the Government.

The petitioners also suggest that certain congressional enactments, respecting the payment of benefits to holders of certificates of discharge from the draft, recognize and ratify the issuance of such discharges. The flaw in this argument is, of course, that while Congress may have recognized that certificates of discharge from the draft were issued, Congress certainly did not intend to ratify a violation of the law, nor did Congress attempt to say that the military authorities had acted properly and legally in issuing a certificate of discharge from the draft in any individual case. In other words, the case of the respondent must be judged upon its individual merits, upon the ad-

mitted facts and the Regulations as they existed at the moment of his discharge. When the case is judged in this way, it is apparent that the military authorities were required by law to issue to the respondent a certificate of honorable discharge.

CONCLUSION.

In substance the issue presented by this case is whether or not the military authorities may do as they please without regard for the law. We submit that this question should be answered in the negative, and that the decision of the Court below was correct and should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 229.—October Term, 1946.

Robert P. Patterson, Secretary of War, and Edward F. Witsell, The Adjutant General, United States Army, Petitioners,
v.
James John Lamb.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[January 20, 1947.]

Mr. Justice Black delivered the opinion of the Court.

On October 28, 1944, respondent brought this action in the United States District Court for the District of Columbia against the then Secretary of War and Adjutant General of the Army.[1] He prayed for a judgment declaring that he had served in the United States Army from November 11, 1918 (Armistice Day) until November 14, 1918, and that for this service he was entitled to a certificate of honorable discharge from the Army, instead of the certificate of "Discharge from the Draft" which had been issued to him. He also prayed for a mandatory injunction to compel issuance to him of a certificate of honorable discharge from the Army.

The complainant alleged that on November 9, 1918, he received a communication from his local draft board directing him to report to the board at Davenport, Iowa, for "immediate military service" at 9 a. m., November 11, 1918, and stating that from that day and hour he would be "a soldier in the military service of the United States"; that he reported as ordered, and was made the leader of the

[1] The Secretary of War and The Adjutant General against whom the action was originally instituted are no longer in office; their successors have been properly substituted as parties.

drafted group there assembled which was to board a train that day for a mobilization camp at Camp Dodge, Iowa; that during the day he was told that because of the Armistice the draft call had been canceled; that he and the other draftees would not go to Camp Dodge, but could return home, still soldiers, and await further orders; that four days later he received a notice from his board that by telegraphic order of the Provost Marshal, acting under instructions of the President, all induction orders throughout the Nation had been canceled, and all registrants, who, like himself, had been inducted but not entrained, were discharged from the Army; and that cancellation of their induction orders would have the effect of an honorable discharge from the Army. He further alleged that in January, 1919, he received a certificate dated November 14, 1918, entitled "Discharge from Draft," accompanying which was a check for four dollars ($4.00) bearing the notation "Final Pay"; that because of the foregoing circumstances he had always assumed that his discharge had the effect of an honorable discharge from the Army; that he had obtained certain tax exemptions from the State of Iowa on the ground that he had such a discharge, but was later authoritatively denied the exemptions by reason of a decision of the State supreme court, *Lamb* v. *Krueger*, 233 Iowa 730; that it was after this decision that he applied for and was denied an honorable discharge by the Secretary and Adjutant General.

The District Court sustained petitioner's motion to dismiss the complaint on the ground that it failed to state a cause of action for which relief could be granted. Other grounds of the motion, not passed on by the District Court, were that the alleged cause of action was not justiciable, was barred by laches, and that the type of certificate to be issued draftees under the circumstances alleged was a matter solely within the discretion of the Secretary of War and not a subject for judicial review. The Court of Appeals

reversed, rejecting all the grounds set up in the motion to dismiss. 154 F. 2d 319. This holding not only decided important questions concerning the power of the War Department, but also upset twenty-five years of important War Department rulings and practices which have affected, and will hereafter affect, the status and claims of thousands of draftees of the First World War. This called for our review, and we granted certiorari.

Whether and to what extent the courts have power to review or control the War Department's action in fixing the type of discharge certificates issued to soldiers,[2] is a question that we need not here determine; nor need we decide whether the action should have been dismissed because of laches. For we are satisfied that the War Department was within its power in granting a discharge from draft rather than the type of discharge it granted soldiers who performed military service after having become fully and finally absorbed into that service.

The only statute which directly bears upon "certificates of discharge" for enlisted men, Article of War 108, set out below,[3] does not particularly prescribe the types or contents of certificates authorized to be granted. But pursuant to authority granted by Congress,[4] the War Department many years ago promulgated Army Regulation No. 150 which provided for three types of certificates of dis-

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[2] See *Denby* v. *Berry*, 279 Fed. 317, 263 U. S. 29; *Davis* v. *Woodring*, 111 F. 2d 523; *Palmer* v. *United States*, 72 Ct. Cls. 401; *Wilbur* v. *United States*, 281 U. S. 206; *cf.* 58 Stat. 286, 38 U. S. C. Supp. IV, § 693h.

[3] "No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge signed by a field officer of the regiment or other organization to which the enlisted man belongs . . ." 39 Stat. 619, 668.

[4] 18 Stat. 337, 10 U. S. C. § 16; see also *United States* v. *Elinson*, 16 Pet. 291, 301–302.

charge: honorable, dishonorable, and unclassified.[3] An honorable discharge was one granted to a soldier whose conduct in service had been such as to warrant his reenlistment. This regulation was well suited to fit cases of soldiers who had enlisted under ordinary conditions, had seen service and had been discharged in the course of regular Army routine. On its face, however, it shows how poorly it was adapted to fit the extraordinary circumstances bound to develop in connection with a nation-wide program for passing upon acceptances, rejections, and discharges of draftees in the course of their progress from their homes to their complete and final integration into the Army. So, after the passage of the 1917 Draft Act, 40 Stat. 76, the War Department, on January 12, 1918, issued its Circular No. 651 in which it made provision for men discharged from draft as distinguished from men discharged from the Army. This provision, in effect when respondent reported for induction, had particular, though not necessarily exclusive, reference to draftees rejected for one reason or another at mobilization camps after their induction at their local draft boards. But despite the fact that draftees became subject to military law and duty from the moment of their

[3] Paragraph 150 of the Army Regulations of 1913, corrected to April 15, 1917, was as follows:

"150. Blank forms for discharge and final statements will be furnished by The Adjutant General's Department and will be retained in the personal custody of company commanders. Discharge certificates will be used in the discharge of enlisted men and for no other purpose, and will be of three classes: For honorable discharge, for discharge, and for dishonorable discharge.

They will be used as follows:

1. The blank for honorable discharge, when the soldier's conduct has been such as to warrant his reenlistment and his service has been honest and faithful.

2. The blank for dishonorable discharge, for dishonorable discharge by sentence of a court martial or a military commission.

3. The blank for discharge when the soldier is discharged except as specified under sections 1 and 2 of this paragraph (C. A. R. Nos. 14 and 34)."

arrival for entrainment at the local board, Selective Service Regulation 174–176 provided that they nevertheless were not finally accepted for military service, and could be rejected after arrival at camp.* And it was not until they had been finally accepted that they could or would be assigned to full-fledged duty as soldiers.

The Discharge from Draft Form No. 638, referred to in Circular No. 651, was originally prepared for draftees rejected at camp after induction "on account of physical unfitness, dependency, etc." Form No. 638 had been in use long prior to the respondent's rejection on the ground that the Government did not need his services after the Armistice. Had the Armistice not been declared, had respondent gone on to Camp Dodge, and had he then been rejected for any reason there, he would have received, not an honorable discharge from the Army, but a "Discharge from Draft." Yet we are asked to give the regulations and certificates a judicial construction, contrary to the Army's construction, whereby respondent, who got no farther than his local board, would stand in a better status than the tens of thousands of other draftees who came much closer to complete integration into the Army than he ever did.

An argument to support this contention is that the telegraphic order issued from Army headquarters on Armistice Day, which canceled entrainment orders for respondent and about 155,000 other draftees then ready for entrainment, provided that all of them were "discharged from the Army." But that same order stated that "The issue of formal papers of discharge will be considered and determined later" and that the purpose of the telegraphic order was "merely to cancel outstanding calls and stop the entrainment thereunder of men for the Army." And when "the issue of formal papers of discharge" was "later"

* *Cf. Gibson* v. *United States*, No. 23, O. T. 1946; *Dodez* v. *United States*, No. 86, O. T. 1946.

considered, it resulted in War Department Circular No. 111 of 1919. That circular was the follow-up of the President's Armistice Day draft cancellation order, and as foreshadowed by the Armistice Day order, this circular prescribed with definiteness the type of "formal papers of discharge" which this respondent and others like him would later receive. It was a "Discharge from Draft."

No statute or previous Army Regulation had provided for the extraordinary situation which developed on Armistice Day and which made it necessary for the President to halt the processing of these thousands of men and direct that they return to their homes. When this new situation arose, it was certainly within the province of the War Department to provide for its solution by, among other things, issuing to those returned home an appropriate form of certificate, whether of the honorable discharge variety, a "discharge from the draft," or some special form designed specifically for the occasion. Respondent was inducted into the Army and was discharged before he reached a mobilization camp for final processing. His discharge adequately indicates these facts. The law demands no more.

Reversed.